

FANNIE MAE SERVICING

**DELINQUENT LOANS
FORECLOSURES
1099 IRS REPORTING
LOSS MITIGATION ALTERNATIVES
BANKRUPTCY
REINSTATEMENTS
REPORTING TO CREDIT BUREAUS
MONTHLY DELINQUENCY REPORTING
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Introduction To Delinquent Mortgages Generally describes, but is not inclusive, of Fannie Mae's requirements for servicing delinquent mortgages from the time they first become delinquent through the development of special relief measures or loss mitigation alternatives to avoid foreclosure proceedings. A servicer is totally responsible for taking all steps necessary to ensure that the terms of the mortgage loan are followed. These requirements apply for all mortgages Fannie Mae purchases or securitizes as standard transactions.

Overview of Accepted Standards

A servicer must establish a system for servicing delinquent mortgages that follows the accepted standards used by prudent lenders. The servicer's system must include, at least, the following:

- An accounting system that immediately alerts the appropriate department that a mortgage is delinquent.
- A collection department staff that is familiar with all FHA, VA, RHS MI, and Fannie Mae procedural and reporting requirements.
- Counseling procedures to advise borrowers how to avoid or to cure delinquencies.
- Guidelines for the individual analysis of each delinquency
- Instructions and adequate controls for sending delinquent notices, assessing late charges, returning partial payments, maintain collection histories, reporting delinquencies to credit bureaus, etc.
- Management review procedures to evaluate both the borrower's actions and the servicer's collection efforts before a final decision is made to accept some form of repayment arrangement or to start liquidation proceedings.
- A method for comparing the servicer's own delinquency and foreclosure ratios with those of others in the industry. (Fannie Mae provides statistical data to enable servicer's to review the statistics they maintain on its seriously delinquent mortgages.)

**Collection
Procedures**

The purpose of collection efforts is to bring a delinquent mortgage current in as short a time as possible.

- Determine most effective form of contact with specific borrowers during the various stages of delinquency.
- Employ a variety of collection techniques to include telephone calls. A servicer should begin its telephone contacts between the 17th & 30th day of delinquency, but earlier contact-between the 7th and 10th day of delinquency may be warranted for habitual delinquents. If Fannie Mae has offered
- Mail payment reminder notices by the 10th day of delinquency and late payment notices should be mailed no later than the 17th day of delinquency. Both written notices should include the amount due including late charges.
- Fully document all collection efforts in a permanent mortgage file
- Address first payment delinquencies immediately to prevent it from becoming more serious.
- Make early determination of reason for the delinquency to provide both the servicer and borrower time to make acceptable arrangements for curing the delinquency.
- If arrangements to cure cannot be arranged, the borrower should be given an opportunity to sell the property before initiation of foreclosure.
- The servicer must order an inspection of the property if no contact has been made with the borrowers. If contact has been made and a payment plan established, the servicer must inspect the property at 60-day intervals and continue until mortgage is brought current. If the property is found vacant, the servicer must take immediate actions to protect Fannie Mae's interest in the property.

Foreclosures

This section will describe Fannie Mae's requirements for conducting foreclosure proceedings. A servicer must process foreclosures in accordance with the provisions of the mortgage; state law; the requirements of the FHA, VA, RHS or the MI; and any special requirements that Fannie Mae may have. The servicer must have an effective system to monitor these activities and will be responsible for any losses that occur because it mishandled the case.

Whenever a borrower has shown disregard for the mortgage obligation or is unable to make the mortgage payments, the servicer must protect Fannie Mae's interest by taking prudent action. The servicer must have made every reasonable effort to conduct a personal face-to-face interview with the borrower and to cure the delinquency through loss mitigation or liquidation of the property before proceeding to foreclosure. An inspection and final analysis must have been performed to determine the individual circumstances of the delinquency.

- Foreclosure proceedings for a first mortgage can begin whenever at least three full monthly installments are past due. Foreclosure must begin at once for any mortgage if the borrower is not eligible for relief from foreclosure under the SCRA (Soldiers and Sailors Relief Act) or any state law that similarly restricts the right to foreclose or if the property is abandoned or vacated by the borrower and it is apparent that the borrower does not intend to make the mortgage payments.
- The servicer has the option of retaining any qualified attorney of its choice or, if the security property is located in one of the jurisdictions for which we have retained foreclosure attorneys and trustees, using the services of a Fannie Mae-retained attorney (or trustee).
- The servicer should use any funds remaining in the borrower's escrow deposit account to pay taxes and insurance premiums that come due during the foreclosure process. The servicer also may use escrow funds to pay costs for the protection of the security and related foreclosure costs as long as state or local laws, government regulations, or the requirements of the mortgage insurer or guarantor do not preclude the use of escrow funds for these purposes. If the escrow balance is not sufficient to cover these expenses, the servicer must advance its own funds.

1099 IRS Reporting

- The servicer is responsible for completing the *Cancellation of Debt* (IRS Form 1099-C) accurately, and for filing it with the IRS and providing the information to the borrower (and in some cases, Fannie Mae) by the required dates. If the IRS penalizes us because our servicer failed to file a return—or filed an incorrect or late return—we will require the servicer to reimburse us for any penalty fees the IRS assesses (unless the servicer can document that it met the filing requirements). The form must be filed on or before February 28 of the year following the calendar year in which the discharge of indebtedness occurs.
- The servicer also must furnish the borrower with an information statement before January 31 of that year. The requirement for notifying the borrower can be satisfied by sending Copy B of a completed IRS Form 1099-C (or a substitute statement that complies with IRS requirements for substitute forms) to the borrower's last known address, and the servicer must send Copy C to those states that require it.

Loss Mitigation Alternatives

Fannie Mae does not want to foreclose on delinquent mortgages if there is a reasonable chance of avoiding foreclosure. If the reason for default appears to be long-term or too serious for short-term relief measures, the servicer should consider Fannie Mae's permanent loss mitigation alternatives.

- Servicer should follow Fannie Mae guidelines for offering loss mitigation alternatives on conventional mortgages.
- For government mortgages a servicer should offer the specific workout alternatives that the mortgage insurer or guarantor makes available such as special forbearance, repayment plans, loan modifications, partial claims, pre-foreclosure sales, deed-in-lieu's.

Bankruptcy

When a borrower files bankruptcy, Fannie Mae expects the servicer (assisted by appropriate legal counsel) to take all actions that are necessary to protect their interest. A servicer must be able to provide documentation that shows it took all required actions to mitigate a specific bankruptcy in a timely and appropriate manner. If a servicer mishandles a bankruptcy, and a loss is incurred that is directly attributable to the servicer's failure to properly handle the bankruptcy, Fannie Mae may ask the servicer to "make them whole" or to indemnify them for the amount of the loss.

Reinstatements

The servicer can accept a full reinstatement of a first mortgage even if foreclosure proceedings have already begun. This also is true for a second mortgage as long as the first mortgage is not delinquent or, if it is, as long as the first mortgage servicer has agreed to arrangements for curing the delinquency. A full reinstatement includes payment of:

- All delinquent mortgage payments
- Late charges on the delinquent payments
- Any funds the servicer advanced for protection of the security or to pay taxes, insurance premiums, etc.
- The costs of performing the preforeclosure property inspections required by Fannie Mae or the insurer or guarantor if permitted by the terms of the security instrument
- All legal fees, including attorney or trustee fees that were actually incurred in connection with the foreclosure proceedings that are permitted under the terms of the security instrument and applicable law.

**Notifying
Credit Bureaus**

Each month the servicer must notify the major credit repositories about any delinquent loans including foreclosures. Fannie Mae requires the servicer to provide a "full-file" status report for the mortgage it services for them to each of the four credit repositories. "Full-file" reporting means that the servicer must describe the exact status of each mortgage it is servicing as of the last business day of each month and identify the mortgage by its applicable loan number. Statuses that must be reported for any given mortgage include the following: new origination, current, delinquent (30,60,90 day, etc.) foreclosed, and charged off. The servicer is also responsible for the complete and accurate reporting of mortgage status information to the repositories and for resolving any disputes that arise about the information it reports. A servicer must respond promptly to any inquiries from borrowers regarding specific mortgage status information about them that the servicer reported to the credit repositories. Servicers must comply with all applicable provisions of the Fair Credit Reporting Act, including those provisions that address obligations with respect to disputed or inaccurate information.

**Delinquency
Status
Reporting**

Fannie Mae requires a servicer to advise them of both the action taken to resolve a delinquency and the reason for the default. Each month, a servicer must electronically transmit a file extract of its delinquent mortgages to Fannie Mae that will then be used to update their delinquency tracking system. This system maintains delinquency information for all portfolio mortgages.

**Escrow
Analysis**

The servicer must analyze the account each year to determine its status and to estimate the funds needed for the coming year. After analyzing the account, the servicer can adjust the borrower's deposits to the account in accordance with the mortgage documents, applicable law, or government regulations. The servicer must send the borrower an escrow account statement within 30 days after the end of each escrow account computation year, unless the mortgage documents, applicable law, or government regulations specify otherwise.

Mortgage Payments

Ordinarily, the borrower's monthly payment consists of interest, principal, and escrow deposits for the payment of insurance and taxes. However, escrow deposits usually are not required for a second mortgage and generally may be waived for an individual first mortgage. When the mortgage instrument provides for late charges, they also should be included whenever the payment is received after the date on which late charges become due. In other instances, the payment may include additional funds to be applied toward the unpaid principal balance or to repay monies advanced by the servicer. Some FHA mortgages also may include an additional amount for FHA service charges.

It is the servicer's responsibility to ensure that its payment collection and posting processes enable the timely crediting of borrowers' accounts (including borrowers in bankruptcy) so that late charges are not inappropriately assessed or other actions, such as inaccurate reporting of delinquencies to credit bureaus, are not taken. Although most servicers use automated processes to ensure that borrower payments are posted effective on the date received, servicers are encouraged to periodically audit those mechanisms to ensure their efficient performance, particularly with respect to contingencies such as borrowers' payment by certified mail or borrowers' inclusion of currency/coinage in payment envelopes. The servicer must account for each portion of the borrower's payment in its records as the payments are received.

Late Notices

There are two types of late notices that may be used—a payment reminder notice and a late payment notice. The payment reminder notice can be particularly important to promote good paying habits for new borrowers and as a means of accelerating follow-up procedures for second mortgages.

For most *first mortgages*, the servicer only needs to send the borrower a *late payment notice* for any payment that has not been received by the 16th day after it is due. This notice should state the amount of late charges that are due. However, if the mortgage is one for which we require the servicer to offer early delinquency counseling, the servicer must send both a payment reminder notice and a late payment notice. In this case, the *payment reminder notice* should be mailed no later than the 10th day of delinquency and the *late payment notice* should be mailed no later than the 17th day of delinquency.

For *second mortgages*, a *payment reminder notice* should be mailed immediately after the due date of the first unpaid installment to inform the borrower that a late charge will be assessed if the payment is not received by a specified date. Then, if the payment has not been received by the specified date, a *late payment notice* stating the amount of late charges due should be sent to the borrower.

**Escrow Deposit
Accounts**

Generally, the first mortgages we purchase or securitize require that a portion of the borrower's payment be put into an escrow deposit account so that funds will be available to pay taxes, special assessments, hazard and flood insurance premiums, premiums for borrower-purchased mortgage insurance, ground rents, and similar items when they come due. However, second mortgages usually do not require an escrow deposit account because the servicer of the first mortgage generally maintains such an account. When that is not the case, the servicer of the second mortgage may choose to require an escrow deposit account (if the mortgage documents permit the collection of escrow deposits) to ensure that these items are paid when they come due.

The servicer of a first mortgage must assume full responsibility for administering the borrower's escrow deposit account in accordance with the mortgage documents and all applicable laws and government regulations. It must estimate the periodic escrow deposit required to ensure that funds will be available to pay each expense as it comes due. Each year, it should analyze the account to determine that the balance is adequate and, if necessary, make any adjustments required to meet the estimated future charges. The servicer of a second mortgage that chooses to require escrow deposit accounts must take on these same responsibilities.

When you apply for a home mortgage, you may think that the lender, or loan originator, will service the loan until it is paid off or your house is sold. However, in today's market mortgage servicing rights often are bought and sold. The Real Estate Settlement Procedures Act (RESPA) is a consumer protection statute. Sections 6 and 10 of RESPA provide you with certain rights regarding the servicing of your mortgage and escrow account. Please read this important information concerning your rights and the responsibility of your loan servicer.

RESPA

Your Rights and the Responsibilities of the Mortgage Servicer

Duty of Loan Servicer to Respond to

Complaints. If you have questions or problems with the servicing of your loan, the servicer is required to respond to you. Write to your servicer and call it a "qualified written request under Section 6 of RESPA." It should be a separate letter and not mailed with your payment. The mortgage servicer must respond to you within 60 business days of receipt

Loan Transferred to New Servicer. Your loan servicer is required to notify you in writing at least 15 days before the servicing of your loan is transferred to a new servicer. The notice must include the following information:

- The effective date of the transfer, the date your current servicer will stop accepting payments and the date the new servicer will begin accepting them.
- The name, address, and toll-free or collect call telephone number for the new servicer.
- Information that tells whether you can continue any optional insurance, such as mortgage life or disability insurance, and what action, if any, you must take to maintain coverage.
- A statement that the transfer of servicing does not affect any term or condition of your mortgage documents other than the terms directly related to the servicing of the loan.

Treatment of Payments During Transfer Period. During the 60-day period beginning on the effective date of the transfer, the payment may not be treated as late if you mistakenly send it to the old mortgage servicer instead of the new one.

Escrow Account. RESPA does not require that you maintain an escrow account for the purpose of paying property taxes, hazard insurance, etc. Nor does RESPA have any jurisdiction over the decision of the lender or servicer to require or terminate an escrow account. RESPA does, however, provide you with the following protections with regard to the escrow account:

- If your lender or mortgage servicer requires you to maintain an escrow account for the purpose of paying property taxes, hazard insurance, etc., RESPA requires that the servicer pay such items by the dates due to avoid a penalty or late charge.
- RESPA sets limits on the maximum amount of money the servicer may require you to maintain and pay in the escrow account.

PMI (Private Mortgage Insurance). RESPA has no jurisdiction over the lender's decision to require PMI. Nor does it have any jurisdiction over the lender's decision to cancel PMI. (The **PMI Act** provides information regarding cancellation of PMI.